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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/394,135	09/10/1999	DR. HOLGER K. ESSIGER	NAES1980	3773
30996	7590	02/28/2006		
ROBERT W. BECKER & ASSOCIATES 707 HIGHWAY 66 EAST SUITE B TIJERAS, NM 87059			EXAMINER LUCCHESI, NICHOLAS D	
			ART UNIT 3763	PAPER NUMBER

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/394,135	Applicant(s) ESSIGER, DR. HOLGER K.	
	Examiner Nicholas D. Lucchesi	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 40 is/are allowed.
- 6) ☒ Claim(s) 7-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Priority

1. Applicant's remarks regarding the priority of this application as a CIP of earlier application 09/113,031 have been carefully considered. However, it appears that the instant application is NOT entitled to the priority date of the earlier filed application for the following reasons:

The recitation of the "raised bridge portion" in claim 7 does not have support in the earlier filed parent application, and thus is not entitled to the earlier filing date.

The recitation of "and spaced from the bone by said projecting height of said implants" in claim 8 does not have support in the earlier filed parent application, and thus is not entitled to the earlier filing date.

The last 4 lines of claim 30, specifically the recitation of the rotation and height adjustment features of the implant, are not supported in the earlier filed application, and thus are not entitled to the earlier filing date.

2. Therefore, for the reasons above, it is held that the subject matter of the claims currently under rejection is only entitled to the filing date of the instant application. The previous rejections given have been maintained in this action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Esser.

Esser discloses a bending-resistant bar having a flat cross-section and comprising two end portions 44 (see fig. 3). Note the bridging (raised) portion 46. The end portions have penetrations 48 adapted to receive fastening means for attaching the bar to bone.

Claims 8-13,17-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Branemark '938.

Branemark discloses a device for reshaping human or animal bone, comprising at least two spaced apart implants 8 which have a smooth mantle surface and a blind threaded bore, the implants receiving fasteners 17 which are used to affix a bending resistant bar 3 thereto. The bar 3 has penetrations 15 which appear to be slotted holes. Note that the bar has a flat cross section, and has a convex side and a concave side. Branemark does not show areas of reduced cross sectional size in the bar to define bending areas.

Claim Rejections - 35 USC § 103

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Branemark in view of Esser.

Esser discloses the use of cutouts (reduced cross sections) along the length of a bar type implant.

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It would have been obvious to one skilled in the art to include areas of cross sectional size in the bar of Branemark, as shown by Esser, if one wished to apply slight bends to the bar to assure that it conforms anatomically to a patient.

Allowable Subject Matter


Claims 1-6, 40 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Nicholas D. Lucchesi at telephone number 571-272-4977.



37 CFR 1.136(a)
37 CFR 1.136(b)
37 CFR 1.136(c)